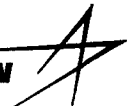


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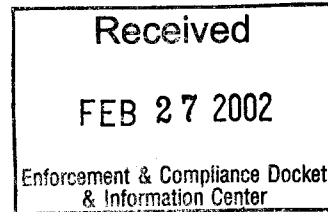
**LOCKHEED MARTIN**



**Kenneth H. Meashey**  
Vice President  
Corporate Energy, Environment, Safety & Health

February 22, 2002

United States Environmental Protection Agency  
Enforcement and Compliance Docket and  
Information Center (Mail Code 2201A)  
Attn: Docket Number EC-2000-007  
1200 Pennsylvania Avenue N.W.  
Washington, DC, 20460.



Re: Cross-Media Electronic Reporting and Recordkeeping - Proposed Rule, 66FR46161  
(August 31, 2001)

Thank you for the opportunity to comment on the proposed Cross-Media Electronic Reporting and Recordkeeping Rule (CROMERRR).

Lockheed Martin Corporation is a global enterprise and the nation's largest defense contractor, employing approximately 130,000 people in the research, design, development, manufacture and integration of advanced technology systems, products, and services for government and commercial customers. The Corporation's core business areas are systems integration, aeronautics, space, technology services and global telecommunications. Lockheed Martin Corporation is committed to conducting operations in a manner that provides and maintains safe and healthful work conditions which protects the environment, and conserves natural resources. We have been an industry leader in reducing the use of hazardous chemicals in our operations, in implementing pollution prevention technologies, and in deploying comprehensive environmental management systems.

Lockheed Martin Corporation is supportive of EPA's intent to facilitate electronic reporting and to allow regulated entities to keep EPA-mandated records electronically. However, Lockheed Martin Corporation is concerned that the CROMERRR, as proposed, will impose costly and resource-intensive strictures on existing electronic data collection and recordkeeping systems, and create unnecessary obstacles to future electronic record keeping and reporting efforts.

Lockheed Martin Corporation requests EPA to withdraw its CROMERRR proposal to allow further discussion with regulated entities concerning existing electronic recordkeeping practices and to take stock of currently imposed information protection obligations for the following reasons:

1. Although EPA presents the CROMERRR recordkeeping provisions as voluntary, as a practical matter, most regulated entities currently make routine use of electronic data systems for collection, management, and development of reports to EPA. As currently proposed, recordkeeping provisions of CROMERRR would apply to these systems rendering them non-compliant with EPA regulations. Consequently the provisions of CROMERRR are not voluntary.
2. As proposed, the CROMERRR would impose extensive requirements on existing electronic data collection and processing systems even where records are stored on paper. This will

result in enormous costs being imposed on regulated entities even though they do not elect to submit information electronically.

3. Existing systems in common use which utilize data stored on computers to meet EPA reporting and recordkeeping requirements would become unacceptable.
4. Future uses of computers to record, store, and manipulate data to meet EPA recordkeeping requirements would require expensive retrofits of existing software and computer systems in order to comply with CROMERRR's requirements. This will stifle innovation and development of such systems.

1. **The CROMERRR is not a voluntary alternative.**

In the Preamble to the Proposed Rule, EPA states that "electronic document submission or electronic recordkeeping will be totally voluntary." (66 Fed. Reg. 46162 et. seq., Aug. 31, 2001). Notwithstanding this assertion, the CROMERRR recordkeeping provisions are clearly mandatory for most records kept electronically in order to comply with EPA's reporting and recordkeeping requirements.<sup>1</sup>

All electronic records created or maintained to meet an EPA recordkeeping requirement would be subject to the provisions of Subpart C of proposed Part 3. The key definition is that of "electronic record." Proposed Section 3.3 defines "electronic record" as --

*any combination of text, graphics, data, audio, pictorial, or other information represented in digital form that is created, modified, maintained, archived, retrieved or distributed by a computer system.*

This very broad definition encompasses virtually all electronic records and software data files, even if created or stored only temporarily on a computer and subsequently printed onto paper.

CROMERRR Section 3.100(a), states an electronic record "will satisfy a recordkeeping requirement of an EPA-administered environmental program under this Title [i.e., 40 CFR] **only if it is generated and maintained by an acceptable electronic record-retention system as specified under this subsection.**" (emphasis added). Whenever regulated entities store monitoring data, emissions data, or other information on a computer, such storage would subject the regulated entities to all of the CROMERRR requirements for electronic recordkeeping.

As a result, although the EPA may have intended for the CROMERRR recordkeeping provisions to be voluntary, the rule would clearly impose mandatory requirements on every regulated entity in the country that creates, modifies, maintains, archives, retrieves or distributes data or other information by a computer system. Furthermore, apparently because the EPA viewed these provisions as voluntary, the Federal Register notice does not contain any analysis required by the Regulatory Flexibility Act nor is there a review as required by the Small Business Regulatory Enforcement Fairness Act.

2. **The CROMERRR would impose extensive requirements on existing electronic data collection and processing systems even where records are stored on paper.**

<sup>1</sup> There is an exception for hazardous waste manifest documentation kept electronically. See 66 Fed. Reg. at 46163. EPA published a proposed rule on electronic hazardous waste manifests at 66 Fed. Reg. 28240 (May 22, 2001). These comments do not address that proposed rule.

Even where a regulated entity routinely collects or maintains required information on a computer and periodically prints out that data, the printed copy apparently would not be sufficient to avoid the application of CROMERRR. A paper copy would still present data that at least at some point would have been "created, modified, maintained, archived [or] retrieved" by a computer system and, therefore, qualify as an "electronic record."

In today's electronic age, agency-mandated records are almost always created, maintained or manipulated electronically at some point in their lifetimes. Under the literal words of CROMERRR, such records would be considered to be "electronic records" subject to the rule, whether or not the information is printed out at some point and the paper records subsequently handled as the "official" records.

Thus CROMERRR would impose mandatory requirements on every regulated entity in the country that utilizes a computer or electronic system to create, modifies, or distributes environmental data even if such entity stored and submitted those records on paper.

3. **CROMERRR would prohibit existing uses of computers to maintain EPA mandated records.**

According to the Preamble to the rule --

*Any regulated company or other entity that maintains records addressed by today's proposal . . . under EPA regulations can store them in an electronic form subject to the proposed criteria for electronic recordkeeping as soon as EPA announces that the specified records may be kept electronically.*

(66 Fed. Reg. at 46167, emphasis added). This language presupposes that current practices that employ computers to store EPA-required records are rare and would hereafter be impermissible, since EPA has not yet made an announcement permitting such practices. While EPA may not have intended this result, the EPA text would make all current electronic recordkeeping unacceptable for meeting EPA recordkeeping requirements. This would be in direct conflict with other EPA regulations.

EPA seems to believe that prior to August 31, 2001 regulated entities did not maintain required records in electronic format. In fact, electronic data collection and records management has been and continues to be a staple of modern business practices. EPA's Clean Air Act regulations promulgated in 40 CFR Parts 60, 61 and 63 provide for maintenance of records in electronic format. For example, continuous emissions monitoring systems have been in use for more than a decade and create electronic records. In addition, many of EPA's regulations require that records of specified information be kept, but do not require that such records be kept in paper format. Moreover, nothing in these regulations prohibits the transfer of paper records to electronic format (e.g., through scanning onto microfiche or creation of Adobe Acrobat® files).

The Part 70 regulations provide the following with respect to retention of records under 40 CFR 70.6(a)(3):

- (ii) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:
  - (A) Records of required monitoring information that include the following:

- (1) The date, place as defined in the permit, and time of sampling or measurements;
  - (2) The date(s) analyses were performed;
  - (3) The company or entity that performed the analyses;
  - (4) The analytical techniques or methods used;
  - (5) The results of such analyses; and
  - (6) The operating conditions as existing at the time of sampling or measurement;
- (B) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

Nothing in this provision indicates that the required records must be maintained in paper format, and regulated entities have understood these regulations to allow retention of records in electronic format. This is particularly true in that the only information that is required to be retained in its original format is "original strip chart recordings." Moreover, in response to comments on individual Title V permits, many states have told regulated entities that information could be retained in an electronic format so long as it was accessible. EPA's assumption that such activities are somehow rare or impermissible prior to the finalization of this rulemaking is incorrect and inconsistent with its own regulations.

4. **Future uses of computers to store data to meet EPA recordkeeping requirements would be permissible only if, in most cases, very expensive retrofits for existing computer systems or new computer systems are implemented.**

The CROMERRR imposes substantial anti-fraud provisions that would apply both to new systems and to existing systems. But most current computer systems simply do not support such provisions and, based on our review of the proposal, CROMERRR would not "grandfather" legacy systems.

Specifically, CROMERRR would impose the following core requirements on existing computer based record keeping systems:

- Generate and maintain accurate and complete electronic records in a form that *may not be altered without detection*.
- Maintain all electronic records *without alteration* for the *entirety* of the required period for record retention. While many EPA recordkeeping requirements have retention periods of five years or less, some have longer periods. Given the changes in both software and hardware that inevitably occur over time, maintaining legacy systems or transitioning the data accurately across multiple generations of computer systems may be very difficult.
- Produce accurate and complete copies of any electronic record and render these available, in both readable *and electronic form*, for on-site inspection and off-site review, for the entirety of the record retention period. This would authorize EPA to access a regulated entity's computer system and search it.

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- Use secure, computer-generated, time-stamped audit trails that automatically record the date and time of operator entries and actions that create, modify, or delete electronic records. Many computer systems and software lack this capability. For example, Microsoft Excel® lacks an audit trail capability, and apparently could not be used without an expensive (and potentially problematic) add-on feature.
- Ensure that record changes do not obscure previously recorded information and that audit trail information is retained for at least the record retention period to be available for agency review.
- Archive electronic records in an electronic format which preserves the context, metadata, and audit trail. If necessary, ensure that complete records can be transferred to a new system including related metadata.

EPA maintains that these rigorous provisions are necessary to deter or punish fraud in connection with all EPA-mandated recordkeeping requirements.


*For both document submission and record-keeping, the point of the proposed requirements is primarily to ensure that the authenticity and integrity of these documents and records are preserved as they are created, submitted, and/or maintained electronically, so that they continue to provide strong evidence of what was intended by the individuals who created and/or signed and certified them. Among other things, today's proposal is intended to ensure that the federal laws regarding the falsification of information still apply to any and all electronic transactions, and that fraudulent electronic submissions or record-keeping can be prosecuted to the fullest extent of the law. In establishing clear requirements for electronic reporting systems and electronic records, this proposed rule will help to minimize fraud by assuring that the responsible individuals can be readily identified.*

However, these anti-fraud provisions duplicate existing anti-fraud provisions in other regulations. In addition, the federal criminal code, 18 U.S.C. §1001, already prohibits making a false statement to the government or keeping fraudulent records required by the government. Virtually all EPA-administered statutes also contain specific prohibitions on making false statements or keeping false records.

For the above stated reasons, Lockheed Martin Corporation requests EPA withdraw its CROMERRR proposal in order to permit further discussion with States and industry concerning existing electronic record keeping practices.

Lockheed Martin Corporation appreciates the opportunity to provide these comments. Please contact John Dietrich (303.971.6032) if you have any questions.

Sincerely,

  
Kenneth H. Meashey